

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 14, 2013

In the Matter of GARCIA, Minors.

No. 314321
Clare Circuit Court
Family Division
LC No. 12-000080-NA

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(h) and (n). We affirm.

A petition was filed seeking jurisdiction of the minor children after respondent was arrested for criminal sexual conduct involving his live-in partner's granddaughter. After a hearing, the trial court assumed jurisdiction, and a supplemental petition was then filed seeking termination of respondent's parental rights. At the termination hearing, petitioner presented evidence of the following: (1) respondent pleaded no contest and was convicted of second-degree criminal sexual conduct (CSC II), MCL 750.520c; (2) the victim was an eight-year-old fictive-kin relative, very similar in age to respondent's children who were five and six years old at the time of the crime; (3) respondent was sentenced to a minimum of four years, nine months and a maximum of 15 years in prison; (4) respondent still had four years, six months remaining on his minimum sentence; (5) upon release from prison, respondent would be deported to Mexico, and (6) respondent had not provided for the children's proper care and custody during his incarceration.

We review for clear error the trial court's decision to terminate parental rights. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009); see also MCR 3.977(K). A finding is clearly erroneous when "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We must give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). We review de novo a trial court's interpretation of statutes and court rules. *In re Mason*, 486 Mich at 152.

"[T]ermination of parental rights is appropriate when one or more statutory grounds for termination under MCL 712A.19b(3) is proven by clear and convincing evidence and

termination is in the best interests of the child.” *In re HRC*, 286 Mich App 444, 452-453; 781 NW2d 105 (2009), citing MCL 712A.19b(5). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights[.]” *In re Ellis*, 294 Mich App at 32. “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

In the instant case, the trial court held that termination of parental rights was warranted on the basis of respondent’s criminal sexual conduct with the eight-year-old granddaughter of his live-in partner, the lengthy term remaining on respondent’s sentence, and the fact that respondent would be deported upon his release from prison.

MCL 712A.19b(3)(h) provides for termination of parental rights on the following basis:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

“The mere present inability to personally care for one’s children as a result of incarceration does not constitute grounds for termination.” *In Re Mason*, 486 Mich at 160. However, where incarceration subjects children to emotional damage, breaches their trust, deprives them of a normal home for more than two years, and leaves no reasonable expectation that proper care and custody will be provided within a reasonable time, termination is proper under MCL 712A.19b(3)(h). *In re Hudson*, 294 Mich App 261, 267-268; 817 NW2d 115 (2011).

MCL 712A.19b(3)(n)(i) provides for termination of parental rights on the following basis:

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

Respondent was convicted of CSC II, MCL 750.520c. Respondent argues that termination was not appropriate because his CSC conviction was not against his daughters. However, MCL 712A.19b(3)(n)(i) is not limited to crimes perpetrated against a respondent’s minor children. Criminal sexual conduct against a child similar in age and gender to respondent’s minor children—a child who was a fictive-kin relative—supports a finding that continuing the child-parent relationship would be harmful to respondent’s children.

Respondent also argues that termination was inappropriate because he provided the names of two relatives who might act as guardians for the children; respondent emphasizes that petitioner made only one telephone call to each person. Respondent further argues that the trial

court “dismissed without even looking into the possibility” that his children could be placed with his mother in Mexico. MCL 722.954a(5) requires the agency to “give special consideration and preference to a child's relative or relatives who are willing to care for the child, are fit to do so, and would meet the child's developmental, emotional, and physical needs.” However, respondent presented no evidence that a relative was willing to care for the children, much less a relative who was fit to do so and would meet the children's various needs. The record indicated that two relatives were contacted and notified that the children needed placement, but neither relative indicated a willingness to accept custody. With respect to placement with respondent's mother in Mexico, respondent made this suggestion after the trial court concluded that his parental rights would be terminated; there was no evidence that respondent's mother was willing to care for the children. Furthermore, in light of the facts of this case, a relative placement would not have prevented the termination of his parental rights pursuant to MCL 712A.19b(3)(h) and (n).

Accordingly, after reviewing the entire record, we conclude that the trial court did not clearly err by terminating respondent's parental rights.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Jane M. Beckering